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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
<http://www.house.gov/judiciary>Federal Communications Commission
Office of the Secretary

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Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Dear General Pate and Chairman Powell:

As you know, the House Committee on the Judiciary has held several hearings to assess the state of competition in the multichannel video distribution (MVPD) marketplace. The Committee most recently examined this issue during a May 8, 2003 hearing titled "Direct Broadcast Satellite Service and Competition in the Multichannel Video Programming Distribution Market." In addition to surveying the competitive landscape of the MVPD market, this hearing focused on competitive aspects presented by News Corporation's proposed acquisition of a controlling interest in the parent company of DirecTV.

I am keenly aware that members of the United States House of Representatives and United States Senate are legislators, not regulators. Thus, during the Committee's May 8th hearing, I stressed that it was not my intention to prejudice the outcome of the independent review of this proposal, and I believe it is inappropriate for members to impose conditions upon the regulatory approval of pending transactions. However, congressional committees that authorize the laws which you implement have a critical obligation to conduct oversight of such laws and their implementation. Additionally, the House Judiciary Committee is committed to examining business practices and structural barriers that unfairly restrain competition in our nation's free market economy. I believe the product of congressional oversight can be instructive to all government agencies and commissions. Consequently, I commend the transcript of the House Committee on the Judiciary's May 8th hearing for your review and consideration.

Because the record from the Committee's hearing is voluminous, I also would like to highlight certain important aspects of the record. While reaction to News Corporation's proposal has not been received with unanimous support, the record from our hearing demonstrates that the antitrust implications of this transaction are fundamentally different from those presented by EchoStar's proposed acquisition of DirecTV. An EchoStar/DirecTV merger would have created a Direct Broadcast Service (DBS) monopoly in the United States.

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The Honorable R. Hewitt Pate
The Honorable Michael Powell
September 29, 2003

In contrast, because News Corporation presently controls no U.S.-based DBS distribution assets, its proposal to obtain a controlling interest in DirecTV does not present the horizontal antitrust concerns that were fatal to regulatory approval of the EchoStar/DirecTV merger by both the Department of Justice and Federal Communications Commission last year. Notwithstanding these crucial differences, some have contended that control of DirecTV by News Corporation might create a vertically-oriented enterprise that could withhold programming from satellite and cable competitors. As you know, media organizations with vertical features are currently present in the U.S. media market. In fact, much larger media companies, such as Time Warner, control both programming and (cable) distribution assets.

Nonetheless, in its license transfer application filed with the Federal Communications Commission, News Corporation agreed to several binding commitments to address potential program access concerns. As detailed in the transcript I am submitting to you, News Corporation specifically agreed to: (1) make its existing and future national and regional programming services available to all distribution platforms on a non-exclusive basis; (2) not discriminate against unaffiliated programming services with respect to the selection of programming services for carriage or the price, terms, or conditions of carriage on DirecTV; (3) not enter into exclusive distribution arrangements with "affiliated programmers" (5 percent or more of a controlling interest); (4) continue to treat programming services owned by Liberty Media (which owns a stake in DirecTV) as a "vertically-integrated program vendor" subject to FCC regulations; and (5) not unduly or improperly influence the decision of an affiliated programmer to sell programming to other distributors, or to influence the prices, terms, and conditions of such a sale. In addition to these obligations, at the Committee's May 8th hearing, News Corporation also pledged to: (1) explore options for the delivery of broadband service, particularly in rural areas; (2) "dramatically increase" local-into-local service provided to DirecTV subscribers; and (3) utilize its considerable international experience in providing DBS programming to facilitate the delivery of digital services to DirecTV subscribers in the United States.

The advent of DBS has eroded cable's MVPD monopoly, invigorated competition and program diversity, and provided millions of Americans with access to expanded programming options at affordable prices. As you complete your review of News Corporation's current proposal to obtain a controlling interest in DirecTV, I trust that you will carefully review the Committee's May 8th hearing record, the absence of horizontal antitrust concerns, News Corporation's extensive program access commitments, and its established record in providing innovative DBS services when weighing the competitive potential of this transaction.

Thank you for your prompt consideration of this matter.

Sincerely,



F. JAMES SENSENBRENNER, JR.

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